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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-212601

DATE: September 20, 1983

MATTER OF: Pierre L. Sales - Foreign Service Grievance Board - GAO Jurisdiction

DIGEST:

An employee of the Agency for International Development (AID) filed a grievance with the Foreign Service Grievance Board under 22 U.S.C. § 1037(a)(1976), for credit of unused sick leave earned while he was employed by a United Nations agency. The Board found for the employee. An AID certifying officer thereafter submitted the case to GAO for review and decision. Under 22 U.S.C. § 1037a(13) such decisions of the Board are final, subject only to judicial review in the District Courts of the United States. Therefore, this Office is without jurisdiction to review the Board's decision in this case.

This decision is in response to a request from a certifying officer, Agency for International Development (AID), on the question of whether an individual reemployed by AID following a period of "secondment" (transfer) to a United Nations (UN) agency may be credited with sick leave earned while with the UN agency, as ordered by the Foreign Service Grievance Board.

Before that issue may be considered, we must consider the threshold issue as to whether we have the jurisdiction to entertain the question. We conclude that we do not have the jurisdiction to consider the matter because by statute the Board's decisions on such matters are final, subject only to judicial review.

FACTS

The employee, Mr. Pierre L. Sales, was employed by AID. On February 1, 1969, he was separated for the purpose of transfer to the United Nations to serve as Deputy Resident Representative of the UN Development Program in Kinshasa, Democratic Republic of the Congo.

On May 1, 1976, following his separation from the UN agency, Mr. Sales exercised his reemployment rights with AID under section 528 of the Foreign Service Act and was

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appointed as a Program Officer. All annual, sick, and home leave hours which he had to his credit on the date he was transferred to the UN were restored to his account under the authority contained in section 3582(b) of title 5, United States Code.

On February 2, 1979, Mr. Sales requested that all sick leave (570 hours) which he had accrued, but did not use, during the period of UN employment from February 1, 1969, through April 30, 1976, be credited to his account. On February 12, 1979, AID disallowed his claim.

Following his retirement on February 28, 1979, Mr. Sales filed a grievance with the Foreign Service Grievance Board to overturn AID's action. On February 6, 1980, the Board found in favor of Mr. Sales. In paragraph VII of the Record of Proceedings No. 79-482-AID-145, the Board ruled that,

"AID is directed retroactively to recalculate the grievant's retirement annuity so as to reflect the crediting of his unused UN sick leave time."

In response to a request by AID in June 1981 that the case be reopened and reconsidered, the Board, on August 4, 1981, reaffirmed its February 6, 1980, decision.

By letter dated February 9, 1983, Bruce M. Berry, a Certifying Officer, questioned the propriety of the Board's action and requested a Comptroller General adjudication. We understand that Mr. Sales' case was submitted here based on an earlier case submitted by AID to this Office requesting our review and determination of the validity of the substantive findings on an entirely different issue, but by the same grievance board.

The case in question was Frank H. Denton, 57 Comp. Gen. 299 (1978). That case was presented here for decision because this Office had previously ruled on and approved AID's method of computing the post differential allowance authorized under 5 U.S.C. § 5925 (1976). Because we had previously ruled on the matter, which ruling was binding on AID and because of the position in which AID found itself as a result of the contrary ruling of the grievance board in the Denton case, we did not consider the question of jurisdiction. Hence the issue of our jurisdiction to review the Board was not specifically raised or addressed.

The law creating the Foreign Service Grievance Board and establishing the grievance procedures thereunder, was contained in title IV of Public Law 94-141, November 29, 1975, 89 Stat. 765, 22 U.S.C. § 1037-1037c (1976). Subsequent to the Board's ruling in the present case, those provisions were repealed and reenacted without substantial change as Subchapter XI, Chapter 52 of title 22, United States Code (Supp. IV, 1980), 22 U.S.C. §§ 4131-4140, by Public Law 96-465, 94 Stat. 2142, October 17, 1980.

Section 1037a(13) of Title 22, United States Code (1976), provides, in part:

"(13) If the board finds that the grievance is meritorious, the board shall have authority * * * (B) to reverse an administrative decision denying the grievant compensation or any other perquisite of employment authorized by law or regulation when the board finds that such denial was arbitrary, capricious, or contrary to law or regulation * * *. Such orders of the board shall be final, subject to judicial review as provided in section 1037c of this title, * * *."
(Emphasis added.)

Section 1037c of title 22, United States Code (1976) provides, in part:

"* * * any aggrieved party may obtain judicial review of * * * final actions of * * * the board * * * in the District Courts of the United States, * * *."

It is our position, therefore, that when the Foreign Service Grievance Board has rendered a final determination in an individual case, over which it has jurisdiction, this Office is without jurisdiction to reverse, modify or otherwise review that ruling, even though we may disagree with the Board's conclusion. The forum for such review, if timely brought, is in one of the District Courts of the United States. If the time for judicial review has expired here, the certifying officer must comply with the Board's ruling in Mr. Sales' case.

Milton J. Aroskar
for Comptroller General
of the United States